IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.: 189 of 2006.

Reserved on: 2.11.2007.

Decided on: 3.12.2007.

K.S. Raina. ----------Petitioner.

Versus

Union of India and others. --------Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioner:	**Ms. Ranjana Parmar, Advocate.**
For Respondent No.1:	**Ms. Shilpa Sood, Central Government Counsel.**
For Respondents No.2 & 3:	**Mr. Ashwani Sharma, Advocate.**

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner started his career in respondent No.2-Company as an Assistant in the year 1969. He submitted application seeking voluntary retirement under Special Voluntary Scheme on 4th February, 2004. The request was accepted by the employer on 5th March, 2004 and he was permitted to retire with effect from 15th March, 2004. Respondent No.1 had issued notification dated 21st December, 2005 under Section 17A of the General Insurance Business (Nationalisation) Act, 1972 whereby the Scheme called as the General Insurance (Rationalisation of Pay Scales and other Conditions of service of Officers) second Amendment Scheme, 2005 was framed. The Scheme has come into force with effect from 1st August, 2002. Under the Scheme the scales of the Officers working in the Company

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[1] Whether reporters of local papers are allowed to see the judgment? Yes.

were revised. While implementing the Notification on 21st December, 2005 the category to which the petitioner belongs, i.e. who had sought voluntary retirement under 2004 Scheme was excluded except for limited relief. The petitioner had approached this Court for the following reliefs:-

> "(i) That the General Insurance (Rationalisation of Pay Scales & Conditions of Service of Officers) Second Amendment Scheme 2005 may be quashed and set aside to the extent it excludes the Officers who have sought Special Voluntary Retirement under Special Voluntary Retirement Scheme 2004 (S.O. 7(E) dated 1.1.2004 and the General Insurance Corporation of India Officers' Special Voluntary Retirement Scheme, 2004 (S.O. 455(E) dated 1st April, 2004) and were relieved prior to the date of notification dated 21.12.2005 resulting in deprivation of the revised pay scale to the petitioner.
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> (ii) That after quashing the proviso under 3A and B, the respondents may be directed to revise the pay scale of the petitioner as per the notification dated 21.12.2005 and to pay him the arrears alongwith interest at some nationalized bank rate.
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> (iii) That the respondents may further be directed to revise the pensionary benefits to the petitioner after such pay fixation as directed by this Hon'ble Court alongwith arrears with interest at some nationalized bank rate.
>
> (iv) That the cost of this litigation may be burdened upon the respondents.
>
> (v) Any other order deemed just and proper in the facts and circumstances of the case may also be passed in favour of the petitioner."

Ms. Ranjana Parmar has strenuously argued that second proviso of para 3 of the Notification dated 21st December, 2005 as applicable to her client is violative of Articles 14 and 16 of the Constitution of India. She then contended that the category to which the petitioner belongs could not be excluded on the basis of the

Notification dated 21st December, 2005 and her client is entitled to revised pay scale with effect from 1st August, 2002.

Mr. Ashwani Sharma has supported the Notification dated 21st December, 2005 and has strenuously argued that since the petitioner had sought voluntary retirement under Special Voluntary Retirement Scheme, 2004, he is precluded from challenging the vires of conditions enumerated in para 3 of the Scheme.

I have heard the learned counsel for the parties and perused the cord.

To appreciate the rival submissions of the parties, it will be appropriate to consider the salient features of the Schemes which were invogue in respondent No.2-Company from time to time. The first Scheme under which an employee of the Company can seek voluntary retirement is called the General Insurance (Employees') Pension Scheme, 1995. Para 30 of the Scheme provides that at any time after an employee has completed twenty years of qualifying service, he may by giving notice of not less than ninety days, in writing to the appointing authority, retire from service. Para 30 is reproduced in its entirety, which reads thus:-

> "(30) **Pension on voluntary retirement:-**
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> (1) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than ninety days, in writing to the appointing authority, retire from service:
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> Provided that this sub-paragraph shall not apply to an employee who is on deputation unless after having been transferred or having been transferred or having been returned in India he has resumed charge of the post in India and has served for a period not less than one year:
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> Provided further that this sub-paragraph shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a

public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

(2) The notice of voluntary retirement given under sub-paragraph (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall before effective from the date of expiry of the said period.

(3) (a) An employee referred to in sub-paragraph (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than ninety days giving reasons therefore;

(b) On receipt of request under clause (a), the appointing authority may, subject to the provisions of sub-paragraph (2), consider such request for the curtailment of the period of notice of ninety days on merits and if he is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may leave the requirement of notice of ninety days on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of ninety days.

(4) An employee who has elected to retire under this paragraph and has given necessary notice to that effect to the appointing authority shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) The qualifying service of an employee retiring voluntarily under this paragraph shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty three years and it does not take him beyond the date of retirement.

(6) The pension on an employee retiring under this paragraph shall be based on the average emoluments as defined under clause (d) of paragraph 2 of this scheme

and the increase not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension:

Explanation:- For the purpose of this paragraph, the appointing authority shall be the appointing authority specified in Appendix-1 to this scheme."

The petitioner had sought retirement under the Special Voluntary Retirement Scheme, 2004. Para 3 of the Scheme prescribes the eligibility criteria and the period of operation of the Scheme is provided under para 4 and the amount of ex-gratia has been stipulated under para 5 and other benefits to which an employee has been held entitled, has been stipulated under para 6.

The petitioner submitted the application under Special Voluntary Retirement Scheme, 2004 on 4th February, 2004, which was accepted by the employer on 5th March, 2004 and he was permitted to retire with effect from 15th March, 2004. Respondent No.1 had issued the Notification dated 21st December, 2005 framing a Scheme called the General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Officers) Second Amendment Scheme, 2005. it will be apt to reproduce para 3 of the Scheme in its entirety to go into the entire gamut of the issues involved in this petition. Para 3 reads thus:-

"(3) This Scheme shall be applicable to those Officers who were in the service of the Corporation or Company as on, or after, the 1st of August, 2002.

Provided that the officers, whose resignations had been accepted or whose services had been terminated during the period from the 1st day of August, 2002 and the date of publication of this Scheme, shall not be eligible for the arrears on account of revision under this Scheme.

Provided further that the officers, who had sought Special Voluntary Retirement under:-

a. the General Insurance Officers' Special Voluntary Retirement Scheme, 2004 (S.O.7(E) dated the 1st January, 2004), in the case of Company, or

b. The General Insurance Corporations of India Officers' Special Voluntary Retirements Scheme, 2004 (S.O.455(E) dated the 1st April, 2004), in the case of Corporation.

and have been relieved thereunder prior to the date of this notification, shall not be eligible for any benefit arising from this Scheme other than that provided for by sub-paragraph 2 of paragraph 5 of the General Insurance Officers' Special Voluntary Retirement Scheme, 2004, or, the General Insurance Corporation of India Officers' Special Voluntary Retirement Scheme, 2004, as the case may be."

It has come in the supplementary affidavit filed on behalf of respondent No.2 that the wage revision of the employees of the nationalized insurance companies follows a periodicity of five years, i.e. 1st August, 1987, 1st August, 1992, 1st August, 1997 and 1st August, 2002. Thus, it is evident that in normal circumstances wage revision should have taken place in the year 2002 instead of 2005.

The General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Officers) Second Amendment Scheme, 2005 has come into force with effect from 1st August, 2002. The petitioner had sought retirement with effect from 15th March, 2004. In the normal circumstances the petitioner was entitled to get the wage revision on the basis of the Notification dated 21st December, 2005 since the same had been made applicable with effect from 1st August, 2002, but the petitioner and similarly situate persons who had sought voluntary retirement under the Special Voluntary Retirement Scheme, 2004 had been excluded from getting the benefit of revision in pay scales on the basis of para 3.

The only ground taken to deny the benefit of revision of pay scale is that the petitioner had agreed to the terms and conditions of 2004 Scheme and after his retirement under the Special Voluntary Retirement Scheme the contract has come into existence between the employer and the employee. The ground taken to deny the petitioner the benefit of revised pay scale with effect from 1st August, 2002 is not sustainable on the following grounds:

Firstly, the persons who had sought voluntary retirement either under the General Insurance (Employees') Pension Scheme, 1995 or under 2004 Scheme constitute a homogeneous class. It is evident from the contents of para 3 of 2005 Scheme that the persons who are governed under the General Insurance (Employees') Pension Scheme, 1995 are not precluded from getting the benefit of revised pay scale and it is only the petitioner and similarly situate persons who had sought the retirement under 2004 Scheme, who have been excluded from getting the revised pay scales. There is no intelligible differentia so as to distinguish the employees who had sought the voluntary retirement under 2004 Scheme or under the General Insurance (Employees') Pension Scheme, 1995. Classification made by the employer on the basis of seeking premature retirement on the basis of two sets of retirement schemes is not sustainable being irrational and discriminatory. The petitioner had submitted his papers for seeking retirement on 4th February, 2004 which were accepted on 5th March, 2004 and he was permitted to seek retirement with effect from 15th March, 2004. The wage revision as per the pleadings of respondents No.2 and 3 takes place every five years. The pay scales were to be revised in the year 2002, but for the reasons mentioned in the reply it took place in the year 2005. A conscious decision has been taken to implement the same with effect from 1st August, 2002. Undoubtedly the petitioner was in employment on 1st August, 2002 with

respondent No.2-Company. He cannot be deprived of the revision of pay scales with effect from 1st August, 2002 to 15th March, 2004 only on the ground that he had sought voluntary retirement in the year 2004 and had agreed to the terms and conditions of the Scheme. Learned counsel appearing on behalf of respondents No.2 and 3 has not placed any contemporaneous record to substantiate that the petitioner has agreed to waive to get the benefits of the revised pay scale. This position was not visualized by the employer in the year 2004 since no revision has taken place on that date i.e. 15th March, 2004. The matter can be viewed from another angle also. The petitioner has a constitutional right to get his pay including the revision in the pay scale and it is settled law by now that the fundamental rights can neither be waived off nor bartered away.

Secondly, it is also held that the petitioner had never acquiesced even as per 2004 Scheme to get the revised pay scale which had been made applicable with effect from 1st August, 2002.

Thirdly, the object sought to be achieved by the issuance of the Notification dated 21st December, 2005 was to give the revised pay scales which were due in 2002. In fact, this has been done by giving retrospective effect vide Notification dated 21st December, 2005. It is, thus, held that classification created on the basis of insertion of sub-clauses (a) and (b) in second proviso of para 3 is violative of Articles 14 and 16 of the Constitution of India.

Their Lordships of the Hon'ble Supreme Court in ***State of Harayana and Another versus Jai Singh, (2003) 9 SCC 114*** have laid down the following tests for valid classification under Article 14 of the Constitution of India:

> **"We will first take up for consideration the argument accepted by the High Court in the impugned judgment that the impugned classification is arbitrary, unreasonable and violative of Article 14 of the Constitution. While**

> **considering the challenge based on Article 14 as to the arbitrariness in the impugned classification, the court has to examine whether the impugned classification satisfies certain constitutional mandates or not. They are (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; (ii) that the differentia must have a rational relationship with the objects sought to be achieved by the Act.** ***(See Kathi Raning Rawat v. State of Saurashtra.)"***

Fourthly, the respondent No.2 being the "State" within the meaning of Article 12 of the Constitution of India its actions are subject to the constitutional limits and the same are to be judged in the light of the fundamental rights granted by Part-III of the Constitution. The action of an instrumentality or the agency of the State must be in conformity with Article 14 of the Constitution. The option given by the petitioner cannot bind him as it is violative of Article 14 of the Constitution of India and it also runs against the public policy. The action of the respondents is not supported by any rational basis or intelligible differentia.

The ratio of the judgment of (2006) 3 SCC 708 cited by Mr. Ashwani Sharma is not applicable to the facts of the present case for the simple reason that in the present case the petitioner was in fact in employment as on 1st August, 2002, the date from which the Notification (Annexure P-4) dated 21st December, 2005 has been made applicable.

Consequently, in view of the observations made above, send proviso of para 3 of the Notification dated 21st December, 2005 is struck down being ultra vires to the extent it deprives the petitioner and other similarly situate persons to get the benefit of revised pay scale with effect from 1st August, 2002 after applying the principle of severability.

Accordingly, the petition is allowed. The petitioner is held entitled to get the revised pay scale corresponding to his post he was occupying as on 1st August, 2002 till 15th March, 2004. The respondents are directed to work out the arrears etc. within six weeks from today.

December 3, 2007 **(Rajiv Sharma), J.**
(sck)